IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.387/2006

Ansar S/o Abdul Gaffar
Versus
The State of Rajasthan through the PP

Date of Judgment :::: 2nd May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri **Biri Singh Sinsinwar with**
Shri Harendra Singh,
Shri Ravi Yadav, and
Shri Kartar Singh, Counsel for accused-appellant
Shri B.N. Sandu, P.P., for the respondent State
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By the Court:-

The matter was listed for orders on the Application for Suspension of Sentence, but, on the request of learned counsel for both the parties, the appeal itself has been heard finally and being disposed of.

Accused appellant Ansar S/o Abdul Gaffar preferred this appeal challenging his conviction and sentence awarded by the Additional Sessions Judge (Fast Track) No.2, Jaipur City, Jaipur, vide its judgment and order dated 31.3.2006, in Sessions Case No.59/2005. The learned trial court has awarded the sentence against the accused-appellant as under:-

Under Sections	*Sentence of Imprisonment*
366, IPC	To undergo 5 years simple imprisonment and a fine of Rs.5,000/-; in default of payment of fine, to further undergo 1 year additional simple imprisonment.
376, IPC	To undergo 7 years simple imprisonment and a fine of Rs.10,000/-; in default of payment of fine, to further undergo one-and-half-year simple imprisonment.
306, IPC	To undergo 5 years simple imprisonment and a fine of Rs.5,000/-; in default of payment of fine, to further undergo one year's simple imprisonment.

All the sentences were ordered to run concurrently.

Learned counsel for the appellant argued the case on merits but, during the course of arguments, rightly did not challenge the order of conviction passed by the trial court in view of the dying-declaration (Exhibit P-1) of deceased Priyanka and statements of PW-2 Smt. Leela Verma, PW-5 Sharad Kumar Verma (parents of the deceased) and PW-11 Dr. Mohan Lal Choudhary.

The contention of learned counsel for the appellant is that appellant has already remained in jail for about 3 years, therefore, his sentence of imprisonment may be reduced to a period of imprisonment already undergone by him.

The learned Public Prosecutor has supported the impugned judgment passed by the trial court.

The order of conviction has not been challenged

by the learned counsel for the appellant, therefore, it is not necessary to refer and discuss the facts of the case.

So far as reduction of sentence of imprisonment is concerned, after considering all the facts and circumstances of the present case, particularly the age of Priyanka and the statement of PW-8 Harish Kumar, I find this case to be a fit one to reduce the sentence of imprisonment of the accused-appellant awarded by the trial court.

Under sub-section (1) of Section 376 IPC the minimum sentence of seven years is prescribed but it is subject to proviso that the court may, for adequate and special reasons, impose a sentence of imprisonment for a term of less than seven years.

In Prem Chand Vs. State of Haryana, AIR 1989 SC 937, in the peculiar facts and circumstances of that case, the Hon'ble Supreme Court reduced the sentence of imprisonment of ten years awarded under Section 376 (2) IPC, to a period of sentence of imprisonment of five years. The State of Haryana filed review petition before Hon'ble the Supreme Court in the above case and the same was dismissed. The decision of the Hon'ble Supreme Court in that review petition is reported in (1990) 1 SCC 249 (State of Haryana v. Prem Chand &

Others).

In Ram Kumar Vs. State of Haryana – (2006) 4 SCC 347, their Lordships of the Hon'ble Apex Court reduced the sentence of seven years under Section 376, IPC, to a period of three years imprisonment. Para No.3 of the judgment reads as under:-

> "3. The appellant, aggrieved by the order passed by the High Court has filed the above appeal by way of appeal. We have been taken through the statement and evidence recorded by the Court. Our attention was also drawn to the judgment passed by both the Sessions Court as well as the judgment passed by the High Court. The learned counsel for the appellant drew our attention to the statement of the girl Bimla (PW-5) and also drew our attention to the evidence of the doctor. We have carefully analysed the evidence tendered by the prosecution. In our opinion, sufficient evidence was tendered by the prosecution to prove the guilt of the accused. However, at the time of hearing it is brought to our notice that the girl has now got married and living with her husband. The said statement is also ratified by the evidence of the father of the girl. Having regard to the peculiar facts and circumstances of the case, we are of the view that the sentence imposed by the Sessions Court and as affirmed

> by the High Court under Sections 366 and 376 of the Penal Code is on the highside. In our opinion, ends of justice would be amply met if we reduce the sentence to three years. We do so accordingly.”

In the case of State of Chhattisgarh Vs. Lekhram (2006) 5 SCC 736 the Hon'ble Apex Court reduced the minimum sentence under Section 376, IPC, of seven years to a sentence of one-and-half-year imprisonment, already undergone by accused therein. Para 16 of the judgment reads as under:-

> “16. The prosecutrix was a mature girl. She was married. She spent a few months in her in-laws' place. The respondent was working in her house. They, thus, knew each other for a long time. The prosecution evidently could not prove its case that she was enticed away from the custody of her guardian by the respondent on a false plea that he would marry her. She denied the said suggestion as presumably she was aware that she being married, the question of her marrying the respondent again may not arise. She lived for some time with the respondent in a rented house. Both the courts proceeded on the basis that she was a consenting party. The occurrence took place in the year 1986. The respondent preferred an appeal before the

> High Court in the year 1987. The same remained pending for about 10 years. The special leave petition was filed by the State 230 days after the prescribed period of limitation for preferring such appeal. The delay in filing the special leave petition, however, was condoned. He is said to have remained in custody for about one-and-a-half years. In the peculiar facts and circumstances of this case and having regard to the facts that both the courts have arrived at the conclusion that she was a consenting party, in our opinion, it may not be proper to send the appellant back to prison."

After considering all the facts and circumstances of the present case as well as the above referred judgments of the Hon'ble Apex Court, I think it fit and proper that ends of justice will meet in case the sentence of imprisonment awarded by the trial court against the appellant under Section 376, IPC, is reduced to a period of 5 years simple imprisonment.

The sentence of imprisonment under other offence is not required to be reduced in view of the fact that the learned trial court has already ordered that all the sentences to run concurrently.

Consequently, the appeal is partly allowed. The conviction of the accused-appellant under Sections 366, 376 and 306, IPC, is maintained. The sentence of

imprisonment under Section 376, IPC, is reduced to a period of 5 years simple imprisonment with fine of Rs.5000/-; in default of payment of fine, to further undergo one month's additional simple imprisonment. The amount of fine awarded by the trial court under Sections 366 and 306, IPC, is reduced to a sum of Rs.1,000/-, in each offence; failing which the appellant shall further undergo for 10 days additional simple imprisonment in each offence.

(Narendra Kumar Jain) J.

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